

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SUE E. RADULOVICH,

Plaintiff-Appellant/Cross-Appellee,

and

SUE E. RADULOVICH, PC,

Plaintiff-Appellant/Cross-Appellee

UNPUBLISHED

May 7, 2003

v

DAVID FINDLING,

Defendant-Appellee/Cross-

Appellant,

and

FINDLING LAW FIRM PC,

Defendant-Appellee/Cross-  
Appellant.

Nos. 233546; 239885

Wayne Circuit Court

LC No. 00-008964

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Before: Whitbeck, C.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Plaintiffs Sue E. Radulovich and Sue E. Radulovich, PC (Radulovich), appeal as of right Wayne Circuit Judge Gershwin A. Drain's March 13, 2001 order granting summary disposition<sup>1</sup> in favor of defendants David Findling and Findling Law Firm, PLC (Findling). Findling cross-appeals Judge Drain's order dismissing his counterclaim with prejudice. In a consolidated case, Radulovich appeals by leave granted Judge Drain's August 3, 2001 order assessing attorney fees and costs against Radulovich for filing frivolous claims. Radulovich sued Findling for his

<sup>1</sup> Although the order does not specify the rule, it appears that the trial court granted summary disposition under MCR 2.116(I)(1) after rejecting defendants' suggested grounds for granting the motion, but finding that Radulovich had failed to establish a prima facie case with respect to any of her claims.

alleged misconduct as court-appointed receiver for Radulovich's former client, Clemence Maciejewski, who owed Radulovich legal fees when he declared bankruptcy. We affirm.

## I. Basic Facts And Procedural History

### A. The Underlying Case Of *Migda v Maciejewski* And Its Resulting Judgment

This case stems from Radulovich's attempts to recover attorney fees from a client, Clemence Maciejewski, whom she defended in a 1989 conversion case that resulted in a judgment in favor of the plaintiff, Theodore Migda.<sup>2</sup> When Maciejewski failed to comply with the judgment, the trial court issued an ex parte injunction in November of 1989 prohibiting Maciejewski or his agents from assigning or encumbering any of the assets at issue in the case. After the injunction was issued, Maciejewski conveyed an interest in property he owned on Helen Street in Garden City to his son.

In 1996, after repeated attempts to collect the judgment were unsuccessful, Migda asked the court to appoint a receiver. On February 7, 1997, Judge Amy Hathaway held Maciejewski in contempt for violating the November 1989 injunction by conveying an interest in the Helen Street property to his son. Judge Hathaway also entered an order appointing Findling receiver, granting him full authority to sell or dispose of Maciejewski's assets to satisfy the judgment and other orders of the court, and specifying that Findling would be paid \$175 an hour for his services. Pursuant to this authority, in July 1997, Findling moved to sell the Helen Street property to satisfy the judgment.

### B. Radulovich's Contempt Proceedings

In August 1997, Maciejewski still owed Radulovich fees for her legal services. Maciejewski gave Radulovich a mortgage on the Helen Street property to secure this debt. Findling discovered this mortgage when Maciejewski filed for bankruptcy on December 4, 1997, and Radulovich was listed as one of Maciejewski's secured creditors. In January of 1998, Findling filed a motion for an order to show cause why Radulovich should not be held in contempt of court both civilly and criminally, arguing that Radulovich's mortgage was a violation of the trial court's injunctive order.

On January 22, 1998, Judge Dalton A. Roberson granted Findling's motion, entering an order for Radulovich to show cause why she should not be held in contempt of court. At the January 30, 1998 hearing, Radulovich initially argued that she had no knowledge of the injunction when she filed the mortgage; however, this testimony was rebutted by an attorney who had previously discussed the injunction with Radulovich and had seen her receive a copy. Radulovich also argued that the injunction was no longer valid because it was issued as an ex parte injunction, and therefore expired after fourteen days.

Judge Roberson rejected Radulovich's arguments and found her in contempt of the court, noting that she was bound to follow the injunction even if she believed it was invalid, and that

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<sup>2</sup> This Court affirmed the judgment in *Migda v Maciejewski*, unpublished opinion per curiam of the Court of Appeals, issued April 21, 1994 (Docket No. 123178).

the proper course of action would be to appeal the injunction if she felt it was wrongly entered. Judge Roberson ordered Radulovich to discharge the mortgage from the property by the following Friday or the court would incarcerate her until the encumbrance was removed.

Radulovich filed an emergency motion for this Court to intervene by issuing a writ of superintending control forbidding Judge Roberson to hold her in contempt; however, this Court denied her motion on February 6, 1998.<sup>3</sup> That same day, the trial court approved the sale of the Helen Street property and discharged Radulovich's mortgage lien.<sup>4</sup> Findling then moved for the trial court to enter an order regarding Radulovich's contempt. In response, Radulovich again argued that the 1989 injunction had automatically expired after fourteen days pursuant to MCR 3.310(B)(3). Radulovich also argued that Findling had deliberately misled the court regarding the applicable law by citing MCR 3.207, which states that ex parte orders remain in effect until modified or superceded but applies only to domestic relations orders.

At the March 13, 1998 hearing, Findling admitted on the record that his citation to MCR 3.207 was erroneous; however, Findling maintained that Radulovich should nonetheless be held in contempt for failing to discharge the mortgage. Noting that Radulovich had disregarded his order to discharge the mortgage, Judge Roberson entered an order finding Radulovich in contempt under MCL 600.1701(c) and (g) and ordered Radulovich incarcerated until she discharged her mortgage on the Helen Street property. Radulovich spent several hours in jail as a result.

### C. Radulovich Appeals The Contempt Order

On April 3, 1998, Radulovich appealed the contempt order to this Court, arguing that she had no knowledge of the injunction which, in any event, had expired. Radulovich also urged this Court to sanction Findling for misleading the court concerning the applicable law by citing the wrong court rule and filing frivolous and vexatious contempt pleadings. However, this Court rejected Radulovich's arguments and affirmed the order.<sup>5</sup> This Court noted that "regardless of whether Radulovich was personally served with the injunctive order, her actual knowledge of it may suffice to support a finding of contempt," and found that it was "readily apparent from the record that Radulovich was on notice of the 1989 injunctive order before accepting the mortgage interest."<sup>6</sup>

Further, although this Court agreed that ex parte orders expire after fourteen days under MCR 3.310(B), the Court observed that the same rule authorizes the trial court to extend the injunction for a longer period for good cause or with the opposing party's consent, which may

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<sup>3</sup> *Sue Radulovich v Wayne Circuit Judge*, Docket No. 209379.

<sup>4</sup> This Court denied Radulovich's delayed application for leave to appeal this order on September 2, 1999. See *Migda v Maciejewski*, Docket No. 217486.

<sup>5</sup> *In re Contempt of Sue E. Radulovich*, unpublished opinion per curiam of the Court of Appeals, issued April 3, 1998 (Docket No. 210779).

<sup>6</sup> *Id.*, slip op at 2.

have been done in 1989 proceedings for which Radulovich did not provide transcripts.<sup>7</sup> Regardless, this Court found “no record support for Radulovich’s claim that the injunction ceased to be valid after 1989. On the contrary, the record indicates that the injunction was in effect continuously throughout these proceedings.”<sup>8</sup> Moreover, even if it were improperly issued initially, this Court held that Radulovich was nonetheless “required to abide by it until it was set aside or declared invalid.”<sup>9</sup> Accordingly, this Court held that Radulovich was properly found in contempt for violating the injunction “whether or not it complied with MCR 3.310.”<sup>10</sup>

Radulovich argued that Findling should have been sanctioned under MCR 2.114 because he misled the court concerning the applicable law by citing the wrong court rule and filed frivolous and vexatious pleadings in connection with her contempt proceeding. However, having reviewed the record, this Court concluded that Findling “corrected his citation and brought the error to the attention of the court before the court issued its final order holding Radulovich in contempt” and that, in any event, “the court did not rely on the incorrect rule in reaching its decision.”<sup>11</sup> Finally, this Court rejected Radulovich’s claim that the receiver’s motions were frivolous or vexatious, because the court had properly found Radulovich in contempt.<sup>12</sup> Radulovich appealed this decision to the Michigan Supreme Court, which denied leave to appeal on December 21, 2001.

#### D. The Orders On Appeal

On March 20, 2000, shortly before this Court ruled against Radulovich in her contempt appeal, Radulovich filed a seven-count complaint against Findling. Count I alleged that Findling breached his fiduciary duty to Radulovich as a creditor by converting funds to his own use, defrauding the court by misrepresenting the law, and terminating Radulovich’s property rights without due process. Count II alleged that Findling converted Radulovich’s funds by appearing in court without notice to Radulovich, a secured creditor, and fraudulently obtaining an order of disbursement that “completely ignored all but one general-unsecured creditor of Clemence Maciejewski” at the March 20, 1998 hearing. Count III alleged intentional infliction of emotional distress based on Findling’s conversion, attempted extortion, and “having [Radulovich] falsely charged with a crime and civil wrongdoing by lying to the court about the law and by failing to correct that error and withdraw his requests for criminal and civil penalties after acknowledging that he lied and misrepresented the law to the court.” Count IV alleged false imprisonment by Findling’s acts of “demand[ing] that [Radulovich] be imprisoned until she perjured herself by signing Defendants’ false documents which stated that she had been paid in full,” “refus[ing] to correct the record after lying to the court and mis-citing the law,” and refusing to take corrective measures when the miscitation was brought to his attention, causing

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Radulovich to be imprisoned for several hours. Count V claimed that Findling engaged in “fraud, deceit and misrepresentation” by requesting, allegedly in ex parte conversations, that Radulovich be held in contempt for failing to release her mortgage and sign a document stating she had been paid in full, which constituted “threats, corruption, and extortion.” Counts VI and VII alleged malicious prosecution and abuse of process, respectively, regarding the contempt charge.

On June 22, 2000, Findling moved for summary disposition under MCR 2.116(C)(1), (4), (7), and (8), arguing that as a receiver, Findling could not be sued without leave of the appointing court, and further noting that Radulovich’s incarceration was the result of her own actions in violation of court orders. Findling also moved to sanction Radulovich for failing to seek leave to sue him before filing her complaint. On July 28, 2000, Findling filed a two-count counterclaim alleging malicious prosecution and abuse of process against Radulovich for filing suit despite her unsuccessful attempt to challenge the contempt order and for suing a receiver without first seeking leave of the court. Findling requested that the court hold Radulovich in contempt, and also requested treble damages and other relief under MCL 600.2907 and MCL 700.369 as well as sanctions under MCR 2.114. On August 24, 2000, Findling amended his summary disposition motion to include two new arguments: first, that Findling had been granted immunity from suit pursuant to an order entered by Judge Roberson on October 24, 1997; second, that that Radulovich’s claims were time-barred under MCL 600.5805.

After hearing the parties’ arguments at a December 8, 2000 hearing, the trial court concluded that it had jurisdiction over the matter, and that it had the authority to permit a receiver to be sued. The trial court made the following statement and ruling from the bench:

Miss Radulovich encumbered the property with a mortgage and Judge Roberson found that she shouldn’t have done that, that the injunction in his mind was valid and legitimate, and he instructed her to discharge the mortgage.

And it’s alleged that Mr. Findling deliberately misrepresented the law to Judge Roberson, and I have a little bit of trouble finding that he actually lied[,] intentionally and deliberately lied to Judge Roberson to give rise to any real cause of action that stems from that. He argued it, Judge Roberson reaffirmed the injunction, and Judge Roberson instructed Miss Radulovich to discharge the mortgage and to take her name off the mortgage that was filed. And she didn’t do that, even though Judge Roberson told her to do it.

And, in many respects, the damages that she suffered flow from her failure to follow the injunction instructions of Judge Roberson. And I don’t believe that a prima facie case exists as to the intentional infliction of emotional distress, false imprisonment, malicious prosecution, abuse of process, fraud, deceit, and misrepresentation. When Mr. Findling was corrected, I think he acknowledged it and things went on from there.

And I really don’t see facts in the pleadings to support the fact that it was a deliberate, intentional lie or misrepresentation on the part of Mr. Findling. I just see it as part of lawyering, arguing, and taking legal positions, just like we’ve

done here today. Both lawyers have argued certain things and taken certain positions, and it's really a call for me to make and that's what Judge Roberson did.

So I'm granting summary judgment as to the intentional infliction of emotional distress, false imprisonment, the fraud and the deceit, misrepresentation count, malicious prosecution, and abusive [sic] process. I also believe that the statute of limitations bars false imprisonment and malicious prosecution.

And what really remains I think after that is the counts dealing with conversion and breach of a fiduciary duty. And again, there was a legal order entered by Judge Roberson that dealt with how the funds were to be distributed and I really don't, again, see any evidence of a breach of a fiduciary duty or conversion on the part of Mr. Findling. So I'm also granting summary judgment as to those counts also. And that is the decision of the court with regard to the complaints in this matter.

The trial court also dismissed Findling's counterclaim, apparently because it had not been filed with the answer as the court rules require, and confirmed at a subsequent hearing that the dismissal was with prejudice.

After a brief hearing on July 27, 2001, the trial court held that Radulovich's complaint was frivolous, and awarded Findling \$7,500 in fees and costs. These appeals followed.

## II. Summary Disposition

### A. Standard Of Review

We review de novo the trial court's decision on a motion for summary disposition.<sup>13</sup>

### B. Analysis

Before addressing each claim individually, we first address Radulovich's general arguments respecting the trial court's authority to summarily dispose of her complaint. Radulovich argues, first, that trial court erroneously granted Findling's motion for summary disposition of the entire complaint on the basis of MCR 2.116(C)(10) despite the fact that Findling did not properly plead this ground; second, that the trial court erred by granting summary disposition before discovery had been held; and third, that the trial court erred in granting summary disposition despite rejecting all of Findling's proffered grounds supporting dismissal.

All three of these arguments may be answered at one stroke by reference to MCR 2.116(I)(1), which gives the trial court the authority to render an immediate judgment "if the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact." Under MCR 2.116(I)(1), the court

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<sup>13</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

need not specify the ground on which the motion for summary disposition is granted.<sup>14</sup> Accordingly, these three arguments are without merit.

### 1. Claims Relating To The Contempt Order

Radulovich argues that the trial court erred in granting summary disposition of Counts III-VII – specifically, intentional infliction of emotional distress; false imprisonment; fraud, deceit and misrepresentation; malicious prosecution; and abuse of process – solely based on its own improper finding that Findling had not intentionally lied when citing the incorrect court rule relating to the expiration of ex parte orders. This argument is flawed for two important reasons.

First, contrary to Radulovich’s representation, Findling corrected his error at the beginning of the March 13, 1998 hearing, which was *before* the trial court held Radulovich in contempt. This is clear from a review of the transcripts, as this Court found when affirming the contempt order.<sup>15</sup> The fact that Findling argued that a contempt order was warranted despite his mistake does not indicate malice toward Radulovich as her complaint states; rather, it indicates only that Findling felt a contempt order was justified on other grounds: specifically, that Radulovich had notice that the injunction was still in effect.

Second, the trial court’s finding that Findling did not intentionally lie when misciting the court rule was not the sole basis for dismissing Radulovich’s claims. Rather, in finding that Radulovich had not established a prima facie case as to these claims, the trial court held that “the damages that she suffered flow[ed] from her failure to follow the injunction instructions of Judge Roberson” and remove her name from the mortgage. Moreover, even if Findling had deliberately lied and not corrected his mistake, the trial court did not rely on the incorrect rule in reaching its decision, as this Court noted when denying sanctions against Findling in Radulovich’s contempt appeal.<sup>16</sup> Therefore, this argument is without merit.

Similarly, Radulovich’s repeated allegations that Findling improperly procured orders from Judge Roberson, even if true, had no bearing on the contempt ruling or on the trial court’s decision to dismiss Radulovich’s complaint. The specific order of which Radulovich complains on this point is an order, stamped by Judge Roberson, granting Findling immunity from suit while acting in his capacity as receiver. However, the trial court clearly rejected the idea that Findling had immunity, either by virtue of this order or under other law. Accordingly, Radulovich may not attribute her detention to Findling’s alleged misconduct in procuring the immunity order.

We see no error in the trial court’s decision to summarily dismiss Counts III-VI of Radulovich’s complaint. These claims were predicated on the notion that Findling had improperly pursued contempt proceedings against Radulovich based on flawed orders and improper citations. However, the trial court found that Radulovich was properly held in

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<sup>14</sup> *Yakowich v Dep’t of Consumer & Industry Services*, 239 Mich App 506, 510 n 6; 608 NW2d 110 (2000).

<sup>15</sup> *Contempt of Sue E. Radulovich*, *supra* at 3.

<sup>16</sup> *Id.* at 3.

contempt for her own refusal to adhere to a previous injunction rather than because of any misconduct on Findling's part. As this Court noted in the related appeal of the contempt order, "'A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date.'" <sup>17</sup> Moreover, the trial court's position is supported by this Court's subsequent finding that the contempt order was properly entered. For these reasons, we affirm the trial court's grant of summary disposition on Radulovich's claims of intentional infliction of emotional distress; false imprisonment; fraud, deceit and misrepresentation; malicious prosecution; and abuse of process. In view of our disposition, we need not reach the issue whether any of Radulovich's claims were barred by the statute of limitations.

## 2. Conversion And Breach Of Fiduciary Duty

With respect to the claims of conversion and breach of fiduciary duty, the gravamen of Radulovich's complaint appears to be that Findling did not use the proceeds from the sale of the Helen Street property to pay Radulovich the debt Maciejewski owed her. We agree with the trial court that Radulovich may sue Findling for these torts without leave of the court. <sup>18</sup> We also agree that Findling was entitled to judgment as a matter of law respecting Radulovich's claims of conversion and breach of fiduciary duty.

Relying on this Court's decision in *Bogrette v Young*, <sup>19</sup> Radulovich argues that Findling had a fiduciary duty to administer Maciejewski's assets for the benefit of *all* his creditors, and that his failure to do so constituted conversion. However, as Findling correctly points out, this principle is inapplicable here. As the *Bogrette* Court made clear, the question whether a creditor may properly file a claim against the receiver must be resolved by examining the language of the trial court's original order appointing the receiver. <sup>20</sup> In *Bogrette*, the order gave the receiver a "broad and unqualified" authority to resolve "all lawful claims."

By contrast, as the original order appointing Findling makes clear, Findling was authorized to use Maciejewski's assets only to pay a specific debt, namely, the judgment in favor of Migda. Therefore, Findling was acting in accordance with the scope of his receivership by seeking to prevent Radulovich from asserting a claim on Maciejewski's assets. Accordingly, the trial court properly dismissed Radulovich's claims of conversion and breach of fiduciary duty.

## III. Sanctions

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<sup>17</sup> *Id.* at 2-3, quoting *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998) and citing *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998) ("An order entered by a court of proper jurisdiction must be obeyed even if it is clearly incorrect").

<sup>18</sup> See *McAfee v Bankers Trust Co*, 253 Mich 685, 686-687; 235 NW 807 (1931) (general rule that a receiver cannot be sued without leave of the court does not apply to a suit against receiver individually for personal tort).

<sup>19</sup> *Bogrette v Young*, 132 Mich App 431; 347 NW2d 193 (1984).

<sup>20</sup> *Id.* at 434.



### A. Standard Of Review

We review the trial court's determination that an action was frivolous for clear error.<sup>21</sup> The trial court's determination of the amount of attorney fees is reviewed for an abuse of discretion,<sup>22</sup> as is the trial court's decision that an evidentiary hearing on fees is unnecessary.<sup>23</sup>

### B. Analysis

First, Radulovich argues that the trial court erred in granting sanctions because her complaint was not frivolous. Whether a claim is frivolous under MCR 2.114(F) and MCL 600.2591 depends on the facts of the case.<sup>24</sup> Under MCL 600.2591(3)(a), an action is frivolous if any one of the following conditions exists:

- (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
- (iii) The party's legal position was devoid of arguable legal merit.

In this case, Radulovich refused to obey an injunction that she had reason to believe was valid when ordered by the trial court to do so and was held in contempt of court as a result. Radulovich then filed a suit against the attorney who filed the contempt motion to recover for damages she suffered under the contempt order. Under these circumstances, we are not left with a definite and firm conviction that the trial court was mistaken in its determination that Radulovich's position was frivolous on the ground that it was devoid of arguable legal merit.<sup>25</sup>

Second, Radulovich argues that sanctions were inappropriate because she prevailed in part on the motion for summary disposition, and because summary disposition was "not ripe" until discovery had been held. Radulovich's notion that she prevailed in any way appears to be based on the fact that the trial court rejected Findling's proffered grounds for granting summary disposition. However, the trial court clearly ruled against Radulovich by summarily disposing of all her claims, despite the fact that it did not do so on the bases Findling suggested. Moreover, as explained, the trial court's grant of summary disposition was appropriate under MCR 2.116(I)(1) regardless of the fact that discovery had not yet been held, because Findling was entitled to judgment as a matter of law. Accordingly, contrary to Radulovich's representation, the trial court's reference to the fact that it had previously ruled against Radulovich was not a miscitation, it was an accurate statement.

<sup>21</sup> *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999).

<sup>22</sup> *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97; 537 NW2d 471 (1995).

<sup>23</sup> *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002).

<sup>24</sup> *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002).

<sup>25</sup> MCL 600.2591(3)(a)(iii); *In re Attorney Fees & Costs*, *supra* at 701.

Finally, Radulovich argues that the trial court erred by denying her request for an evidentiary hearing to determine the amount of the award. As a general matter, when a party challenges the reasonableness of the fee requested, the trial court should “inquire into the services actually rendered prior to approving the bills of costs.”<sup>26</sup> “Although a full-blown trial is not necessary” to this inquiry, “an evidentiary hearing regarding the reasonableness of the fee request is.”<sup>27</sup> However, if the record is sufficient to review the issue, an evidentiary hearing is not required.<sup>28</sup>

In this case, Findling submitted an affidavit from his counsel which stated that Findling had incurred \$7,532.49 in attorney fees as of March 14, 2001, plus an additional \$10,000 as of March 23, 2001. A bill for \$7,532.49 was submitted with the affidavit. The trial court awarded \$7,500 in fees and costs. Because this amount was supported by an affidavit as well as a bill for services, we hold that the trial court did not abuse its discretion by concluding that an evidentiary hearing was unnecessary.

#### IV. Cross-Appeal

##### A. Standard Of Review

We review a trial court’s decision to dismiss an action for an abuse of discretion.<sup>29</sup>

##### B. Analysis

Radulovich argued that Findling’s counterclaim should be dismissed for failing to comply with MCR 2.203(E), which requires a counterclaim to be filed with the answer. The trial court’s ruling on Radulovich’s motion consisted only of this somewhat cryptic sentence: “Well, I’m not going to grant the motion to dismiss the counter complaint as improperly filed, so the motion will be granted. I’m going to grant.”

Whatever the trial court’s rationale for dismissing the counterclaim, we decline to reverse that ruling. A review of the hearing transcript indicated that Findling agreed to dismiss his counterclaim if the trial court dismissed Radulovich’s claims against him, which it did. It is a well established rule that a party may not assign error on appeal to something his or her own counsel deemed proper at trial.<sup>30</sup> Accordingly, we affirm the trial court’s dismissal of Findling’s counterclaim.

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<sup>26</sup> *B & B Inv Group v Gitler*, 229 Mich App 1; 581 NW2d 17 (1998), quoting *Wilson v General Motors Corp*, 183 Mich App 21, 42; 454 NW2d 405 (1990).

<sup>27</sup> *Id.* at 42-43.

<sup>28</sup> *Id.*, citing *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999); *Giannetti Bros Const Co, Inc v City of Pontiac*, 175 Mich App 442, 450; 438 NW2d 313 (1989).

<sup>29</sup> *Zantop Int’l Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 359; 503 NW2d 915 (1993).

<sup>30</sup> See *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989).

Affirmed.

/s/ William C. Whitbeck  
/s/ E. Thomas Fitzgerald  
/s/ Brian K. Zahra